

MARCEL RODARTE
Mayor
LEONARD SHRYOCK
Vice Mayor
CHERI KELLEY
Councilmember
MICHAEL MENDEZ
Councilmember
LUIGI VERNOLA
Councilmember
MICHAEL J. EGAN
City Manager



12700 NORWALK BLVD., P.O. BOX 1030, NORWALK, CA 90651-1030 * PHONE: 562/929-5700 * FACSIMILE: 562/929-5773 * WWW.NORWALKCA.GOV

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

43 August 5, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

July 16, 2014

Sachi A. Hamai, Executive Officer
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 383
Los Angeles, CA 90012

SUBJECT: NOVEMBER 4, 2014 SPECIAL MUNICIPAL ELECTION

Dear Ms. Hamai:

At its meeting of July 15, 2014, the City Council adopted Resolutions pertaining to the calling of a Special Municipal Election for November 4, 2014, placing a Measure on the ballot. Enclosed are two certified copies of resolutions calling the election and requesting consolidation with the Statewide General Election:

Resolution No.

- | | |
|-------|--|
| 14-40 | Ordering the Submission to the Qualified Electors of the City of a Certain Measure Amending Chapter 3.36 of Title 3 of the Norwalk Municipal Code, the Utility Users Tax, at the Special Municipal Election to be held on Tuesday, November 4, 2014. |
| 14-41 | Requesting that the Los Angeles County Board of Supervisors authorize the Registrar/Recorder's Office to consolidate the City's Special Municipal Election with the Statewide General Election on November 4, 2014. |

Please schedule this request on the next available Board of Supervisor's Agenda. I would appreciate receiving notice of when the item is scheduled.

Should any further action be required by us, or should you require additional information, please do not hesitate to contact me at (562) 929-5715.

Sincerely,

Theresa Devoy
Theresa Devoy, CMC
City Clerk

Enclosures

RESOLUTION NO. 14-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORWALK REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO CONSOLIDATE A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO §10403 OF THE CALIFORNIA ELECTIONS CODE

WHEREAS, the City Council of the City of Norwalk adopted Resolution No. 14-40, calling a Special Municipal Election to be held on November 4, 2014;

WHEREAS, pursuant to its right and legal authority the City Council is submitting to the voters a question relating to the adoption of an ordinance to modernize the City's Utility Users Tax; and

WHEREAS, it is desirable that the Special Municipal Election be consolidated with the Statewide General Election to be held on the same date and that, within the City, the precincts, polling places and election officers of the two elections be the same, and that the Registrar of Voters of the County of Los Angeles conduct the election and canvass the returns of the Special Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORWALK DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to the requirements of §10403 of the California Elections Code, the Board of Supervisors of the County of Los Angeles is hereby requested to consent and agree to the consolidation of a Special Municipal Election with the Statewide General Election on Tuesday, November 4, 2014, for the purpose of submitting a proposed Measure to the voters an ordinance relating to the City's Utility User Tax.

Section 2. That a Measure is to appear on the Special Municipal Election ballot as follows:

Without raising current tax rates, shall an ordinance be adopted modernizing the City's utility users tax ordinance to require equal treatment of taxpayers by ensuring the tax applies regardless of technology used; exempting seniors, low-income disabled/blind residents; funding current gang prevention, youth, after-school, senior and disabled programs; neighborhood patrols/school crossing guards, pothole repairs, and other general services; subject to financial audits, local control of funds/no rate increase without voter approval?	YES
	NO

Section 3. That the Registrar of Voters of the County of Los Angeles is authorized to canvass the returns of the Special Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. The election will be held and conducted in accordance with the provisions of law regulating the statewide or special election.

Section 4. That the Board of Supervisors is requested to issue instructions to the Registrar of Voters of the County of Los Angeles to take any and all steps necessary for the holding of the consolidated election.

Section 5. That the City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs upon presentation of reasonably detailed invoices.

Section 6. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and Registrar of Voters of the County of Los Angeles forthwith.

Section 7. That the City Clerk shall certify to the passage and adoption of this resolution.

APPROVED AND ADOPTED this 15th day of July 2014.



**MARCEL RODARTE
MAYOR**

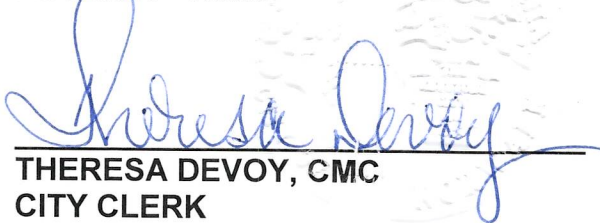
ATTEST:

I, **Theresa Devoy**, City Clerk of the City of Norwalk, California **DO HEREBY CERTIFY** that the foregoing Resolution, being **Resolution No. 14-41** has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Norwalk City Council, held July 15, 2014, and that the same was approved and adopted by the following vote to wit:

AYES: Councilmembers Kelley, Mendez, and Vernola; Vice Mayor Shryock
and Mayor Rodarte

NOES: None

ABSENT: None



**THERESA DEVOY, CMC
CITY CLERK**

RESOLUTION NO. 14-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORWALK REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO CONSOLIDATE A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO §10403 OF THE CALIFORNIA ELECTIONS CODE

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Section 2. That a Measure is to appear on the Special Municipal Election ballot as follows:

Without raising current tax rates, shall an ordinance be adopted modernizing the City's utility users tax ordinance to require equal treatment of taxpayers by ensuring the tax applies regardless of technology used; exempting seniors, low-income disabled/blind residents; funding current gang prevention, youth, after-school, senior and disabled programs; neighborhood patrols/school crossing guards, pothole repairs, and other general services; subject to financial audits, local control of funds/no rate increase without voter approval?	YES
	NO

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Section 5. That the City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs upon presentation of reasonably detailed invoices.

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Section 7. That the City Clerk shall certify to the passage and adoption of this resolution.

APPROVED AND ADOPTED this 15th day of July 2014.



**MARCEL RODARTE
MAYOR**

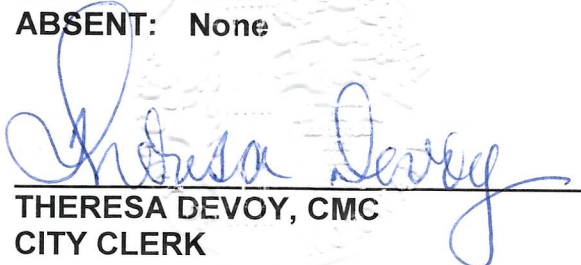
ATTEST:

I, **Theresa Devoy**, City Clerk of the City of Norwalk, California **DO HEREBY CERTIFY** that the foregoing Resolution, being **Resolution No. 14-41** has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Norwalk City Council, held July 15, 2014, and that the same was approved and adopted by the following vote to wit:

AYES: Councilmembers Kelley, Mendez, and Vernola; Vice Mayor Shryock
and Mayor Rodarte

NOES: None

ABSENT: None



**THERESA DEVOY, CMC
CITY CLERK**

RESOLUTION NO. 14-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORWALK CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, FOR SUBMISSION TO THE QUALIFIED VOTERS OF THE CITY A PROPOSED ORDINANCE AMENDING CHAPTER 3.36 OF THE NORWALK MUNICIPAL CODE TO MODERNIZE THE LANGUAGE FOR THE UTILITY USERS TAX (UUT) WITH NO INCREASE TO THE CURRENT TAX RATE

WHEREAS, for more than two decades, similar to numerous cities throughout California the City of Norwalk has collected a utility users tax; and

WHEREAS, technology and communications services have changed dramatically over the past 22 years and continues to evolve at a rapid pace, rendering the City's existing UUT ordinance outdated; and

WHEREAS, due to the passage of time since the establishment of the current UUT, clarifications and updates to an outdated ordinance are needed at this time; and

WHEREAS, among other policy objectives, the City seeks to ensure that all residents are treated equally regardless of what types of telecommunications services they use; and

WHEREAS, modernization and clarification of the UUT to include current technologies and reflect the realities of the current communications industry, require voter approval under the California Constitution; and

WHEREAS, this proposed measure will NOT increase tax rates, but simply maintains funding for services the community already relies on, while ensuring all Norwalk taxpayers are treated equally and fairly, providing for everyone to pay their fair share, regardless of the technology they use; and

WHEREAS, this measure contains safeguards such as mandatory, independent financial audits and posting these audits for public review; and

WHEREAS, strict financial accountability ensures that funds are spent efficiently, effectively and as promised and cannot be taken by Sacramento; and

WHEREAS, this measure will maintain City-funded after-school and recreational programs and youth job training programs, as well as gang prevention programs for at-risk youth. These programs provide over 5,000 per month children and youth in our community with safe, supervised activities that keep them off the streets and out of trouble; and

WHEREAS, this local funding will continue to provide revenue for programs for seniors including meals-on-wheels and senior supportive services, services for residents with physical and developmental disabilities, school safety programs and gang prevention programs; and

WHEREAS, revenue from this measure will help maintain quality parks, roads and graffiti-free neighborhoods which means less crime and gang activity and improves local property values; and

WHEREAS, this measure allows the City to continue making Norwalk a safe and attractive place to live; and

WHEREAS, the measure contains exemptions for low-income disabled and blind customers and the City desires to continue those exemptions; and

WHEREAS, this measure prohibits any increase in the UUT tax rate without voter approval; and

WHEREAS, the slowdown in the local economy has resulted in a decline in other types of revenue for the City to devote to essential City services and updating this measure ensures a local source of revenue that by law must be used to fund local services and cannot be taken by Sacramento politicians; and

WHEREAS, the City Council has unanimously declared a fiscal emergency in the City as a result of numerous economic factors;

WHEREAS, due to the existence of the fiscal emergency the City Council desires to submit to the voters at a Special Municipal Election a proposed ordinance to modernize the City's utility user tax; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed ordinance to the voters for ratification and approval

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORWALK DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That there is called and ordered to be held in the City of Norwalk, California on Tuesday, November 4, 2014, a Special Municipal Election for the purpose of submitting a measure to the voters.

Section 2. The City Council has declared by unanimous vote that a fiscal emergency now exists in the City. Given the State's cuts in funding for local services, a continuing level of local revenue is immediately needed to fund a level of municipal services required to properly protect the public health, safety, and welfare. There is no scheduled regular municipal election prior to March of 2015. Given the existence of such a fiscal emergency and the requirements of the California Constitution, the City Council hereby orders that the following measure be submitted to the voters at the special election called herein, rather than the next regular municipal election:

Without raising current tax rates, shall an ordinance be adopted modernizing the City's utility users tax ordinance to require equal treatment of taxpayers by ensuring the tax applies regardless of technology used; exempting seniors, low-income disabled/blind residents; funding current gang prevention, youth, after-school, senior and disabled programs; neighborhood patrols/school crossing guards, pothole repairs, and other general services; subject to financial audits, local control of funds/no rate increase without voter approval?	YES
	NO

Section 3. The type of tax is a utility users tax imposed on users of telephone, electric, and gas utility services in the City, as defined in Exhibit A, to the extent permitted by state and federal law. The rate of the tax shall not exceed 5.5% and utility service providers shall collect the tax from utility service users on the utility service bills, to be remitted to the City thereafter. The full text of the ordinance to be submitted to the voters is attached as Exhibit A, which is incorporated herein by this reference.

Section 4. That the ballots to be used at the election shall be in form and content as required by law.

Section 5. That the City Clerk is authorized, instructed and directed to coordinate with the County of Los Angeles Registrar-Recorder/County Clerk to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 6. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in §14401 of the Elections Code of the State of California.

Section 7. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 8. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 9. That the City Clerk shall certify to the passage and adoption of this resolution.

Section 10. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

APPROVED AND ADOPTED this 15th day of July 2014.



**MARCEL RODARTE
MAYOR**

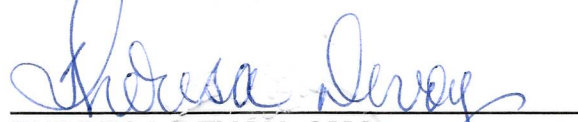
ATTEST:

I, **Theresa Devoy**, City Clerk of the City of Norwalk, California **DO HEREBY CERTIFY** that the foregoing Resolution, being **Resolution No. 14-40** has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Norwalk City Council, held July 15, 2014, and that the same was approved and adopted by the following vote to wit:

AYES: Councilmembers Kelley, Mendez, and Vernola; Vice Mayor Shryock
and Mayor Rodarte

NOES: None

ABSENT: None


**THERESA DEVOY, CMC
CITY CLERK**

ORDINANCE NO. 14-1658

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF NORWALK
AMENDING THE CITY'S UTILITY USERS TAX**

WHEREAS, the Norwalk City Council unanimously declared on June 17, 2014, that a fiscal emergency exists in the City; and

WHEREAS, the City Council submitted this ordinance to the voters at the November 4, 2014 election.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF NORWALK DO ORDAIN
AS FOLLOWS:**

Section 1. Chapter 3.36 of Title 3 the Norwalk Municipal Code ("NMC") entitled "Utility User Tax" which applies a five and one-half percent (5.5%) tax rate on all telephone, electric and gas charges in the City of Norwalk is amended as set forth in this ordinance.

Section 2. In no event may the City Council alter the provisions of sections 3.36.050, 3.36.060, and 3.36.070 to increase the five and one-half percent (5.5%) rate on telecommunication, electric and gas use without the approval of a majority of voters of the City, voting on the question of the tax rate; provided, however, the City Council is hereby authorized to amend any other provisions of Chapter 3.36 of the NMC by three (3) affirmative votes of its members to, without limitation, carry out the general administrative purposes of Chapter 3.36 of the NMC to reasonably implement the collection of the utility user tax through public utilities and other service suppliers as authorized in Chapter 3.36 of Title 3 of the NMC.

Section 3. This Ordinance shall be effective only if approved by a majority of voters voting thereon and shall go into effect ten (10) days after the vote is certified by the City Council.

Section 4. Chapter 3.36 of Title 3 of the NMC is amended to read:

"Chapter 3.36

Utility Users Tax

Sections:

3.36.010	Short Title
3.36.020	Purpose
3.36.030	Definitions
3.36.040	Constitutional, Statutory, and Other Exemptions
3.36.050	Telecommunication Users Tax
3.36.060	Electricity Users Tax

- 3.36.070 Gas Users Tax
- 3.36.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity
- 3.36.090 Bundling Taxable Items with Nontaxable Items
- 3.36.100 Substantial Nexus/Minimum Contacts
- 3.36.110 Duty to Collect – Procedures
- 3.36.120 Collection Penalties – Service Suppliers
- 3.36.130 Actions to Collect
- 3.36.140 Deficiency Determination and Assessment – Tax Application Errors
- 3.36.150 Administrative Remedy – Nonpaying Service Users
- 3.36.160 Additional Powers and Duties of the Tax Administrator
- 3.36.170 Records
- 3.36.180 Refunds
- 3.36.190 Appeals
- 3.36.200 No Injunction/Writ of Mandate
- 3.36.210 Notice of Changes to Chapter
- 3.36.220 Effect of State and Federal Reference/Authorization
- 3.36.230 No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal
- 3.36.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure
- 3.36.250 Remedies Cumulative

3.36.010 Short title. This Chapter 3.36 shall be known as the Utility Users Tax Ordinance of the City of Norwalk.

3.36.020 Purpose. This Chapter 3.36 is enacted solely to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City's General Fund and used for the usual and current expenses of the City.

3.36.030 Definitions. The following words and phrases whenever used in this Chapter 3.36 shall be construed as defined in this Section:

(a) **“Ancillary telecommunication services”** means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) **“Conference bridging service”** means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) **“Detailed telecommunications billing service”** means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) **“Directory assistance”** means an ancillary service of providing telephone number information, and/or address information.

(4) **“Vertical service”** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) **“Voice mail service”** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service

(b) **“Billing address”** shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(c) **“City”** shall mean the City of Norwalk.

(d) **“Gas”** shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

(e) **“Mobile telecommunications service”** shall mean commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations there under.

(f) **“Month”** shall mean a calendar month.

(g) **“Non-Utility Service Supplier”** means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (*15 U.S.C. Section 79z-5a*), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice aggregator), pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

(3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

(h) **“Paging service”** means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(i) **“Person”** shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(j) **“Place of primary use”** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(k) **“Post-paid telecommunication service”** means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(l) **“Prepaid telecommunication service”** means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.

(m) **“Private telecommunication service”** means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i. e., the location where the customer either inputs or receives the communications).

(n) **“Service address”** means the residential street address or the business street address of the service user. For a telecommunication or video service user, “service address” means either:

(1) The location of the service user's telecommunication equipment from which the telecommunication originates or terminates, regardless of where the telecommunication is billed or paid; or,

(2) If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

(3) For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

(o) **"Service supplier"** shall mean any entity or person, including the City, which provides or sells utility service to a user of such service within the City. The term shall include any person required to collect, or self-collect under Section 3.36.080 hereof, and remit a tax as imposed by this Title 3, including its billing agent in the case of electric or gas suppliers.

(p) **"Service user"** shall mean a person required to pay a tax imposed under the provisions of this Chapter 3.36.

(q) **"State"** shall mean the State of California.

(r) **"Tax Administrator"** shall mean the Finance Director, or his or her designee.

(s) **"Telecommunications service"** means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with "telecommunication services." "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

(t) **"VoIP (Voice Over Internet Protocol)"** means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(u) **"800 Service"** means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically

marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

(v) **"900 Service"** means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

3.36.040 Constitutional, Statutory, and Other Exemptions.

(a) Nothing in this Chapter 3.36 shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a Federal or State statute, the Constitution of the United States or the Constitution of the State.

(b) Any service user that is exempt from the tax imposed by this Chapter 3.36 pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user's tax exempt status. A service user that fails to comply with this Chapter 3.36 shall not be entitled to a refund of a users' tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 3.36.190 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.36.190 of this Chapter is a prerequisite to a suit thereon.

(c) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

(d) The utility users tax imposed by this Chapter 3.36 shall not apply to any person who is sixty-five (65) years of age or older, who is a Service User of telephone, electric, or gas services, in or upon any residential premises occupied by such person. The utility users tax imposed by this Chapter 3 shall also not apply to any person who is a Service User of telephone, electric, or gas services, in or upon any residential

premises occupied by such person, and who meets the criterion of eligibility as established by the Social Security Administration's Supplemental Security Income Program for the Blind and Disabled (Title XVI of the Social Security Act as amended), without regard to the age of such disabled person.

(e) The exemption granted by this section shall not eliminate the duty of the Service Supplier from collecting taxes from such exempt persons, or the duty of such exempt persons from paying such taxes to the Service Supplier; unless an exemption is applied for by the Service User and granted in accordance with the provisions of this section.

(f) Any Service User exempt from the taxes imposed by this Chapter because of the provisions of subsection (d) above, may file an application with the Tax Administrator for an exemption. Such application shall be made upon a form supplied by the Tax Administrator; and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption.

(g) The Tax Administrator shall review all such applications, and shall certify as exempt those applicants determined to qualify therefor; and shall notify all Service Suppliers affected that such exemptions have been approved. For each exemption, the following information shall be transmitted to the Service Supplier:

- (1) Name of exempt applicant;
- (2) Account number shown on utility bill;
- (3) Address to which exempt service is being supplied; and

(4) Any other information as may be necessary for the Service Supplier to remove the exempt Service User from its tax billing procedure.

(h) Upon receipt of such notice, the Service Supplier shall not be required to continue to bill any further tax imposed by this Chapter from such exempt Service User, until further notice by the Tax Administrator is given. The Service Supplier shall eliminate such exempt Service User from its tax billing procedure no later than sixty (60) days after receipt of such notice from the Tax Administrator.

(i) All exemptions shall continue and be renewed automatically by the Tax Administrator, so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the Service Address or residence of the exempt individual; further provided such individual may nevertheless apply for a new exemption with each change of address or residence.

(j) The Tax Administrator shall have the power and right to demand evidence of continued eligibility of a Service User for exemption under the provisions of this Section. Such evidence may include, but need not be limited to, copies of business

records, letters or statements from the Social Security Administration, copies of income tax returns, and such other evidence concerning the Service User or other members of his household as may tend to prove or disprove such eligibility. Failure to provide such evidence as is within the control of a Service User to so provide, either directly by him or by his consent or the consent of a member of his household when such evidence is requested of the Service User in writing by the Tax Administrator, shall be grounds for the immediate discontinuance of the Service User's eligibility for exemption under the provisions of this Section. Evidence provided to the Tax Administrator upon request, or voluntarily provided by the Service User without request, may not be used against such Service User as evidence of violation of the provisions of this Section; such evidence may only be used as grounds for termination of the exemption herein provided.

(k) Any person exempt from the tax shall notify the Tax Administrator within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemptions provided by this Section, when the basis for such exemption either does not exist or ceases to exist.

3.36.050 Telecommunication Users Tax.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent, or as otherwise provided by law. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section 124*). The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi jurisdictional taxation .

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter 3.36, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to or not subject to the tax of subsection (a) above.

(d) As used in this Section, the term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

(e) To prevent actual multi jurisdictional taxation of telecommunication services subject to tax under this Section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section.

(f) The tax on telecommunication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.36.060 Electricity Users Tax.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this Section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) energy charges;
 - (2) distribution or transmission charges;
 - (3) metering charges;
 - (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
 - (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
 - (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.
- (c) As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.
- (d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the of the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) As used in this Section, the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

(f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Title 3 shall be collected and remitted in the manner set forth in Section 3.36.080 of this Chapter. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.36.070 Gas Users Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product.

(b) As used in this Section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-

collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,

(5) Charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

(c) As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

(d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this Section, charges made for gas that is to be resold and delivered through a pipeline distribution system.

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Title 3 shall be collected and remitted in the manner set forth in Section 3.36.080. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following

each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.36.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

(a) Any service user subject to the tax imposed by Section 3.36.060 or by Section 3.36.070 of this Chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

3.36.090 Bundling Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be

based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges.

3.36.100 Substantial Nexus/Minimum Contact.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus", "substantial economic presence", and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users' tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, affiliates or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Chapter (e.g., an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City).

3.36.110 Duty to Collect-Procedures.

(a) **Collection by Service Suppliers:** The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service

user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.36.60 shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(b) **Filing Return and Payment:** Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to *Revenue and Tax Code Section 7284.6*, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

3.36.120 Collection Penalties-Service Suppliers.

(a) Taxes collected from a service user, or owed by a service user subject to Section 3.36.080 hereof, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Chapter shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

(b) If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 3.36.52 hereof on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen

percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this Chapter shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users' tax, or otherwise legally established, to create a central payment location or mechanism.

3.36.130 Actions to Collect.

(a) Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under *11 U. S. CA. Section 507(a)(8)(C)*. Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.36.140 Deficiency Determination and Assessment-Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this Chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.36.140 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14)

calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter.

(c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.36.190 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.36.190 of this Chapter is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Chapter shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this Chapter may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.36.150 Administrative Remedy-Non-Paying Service Users.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users

for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.36.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(c) If the service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of receive of notice from the Tax Administrator, the service user shall pay in addition to the tax owed, a delinquency penalty in the sum of twenty-five percent (25%) of the total tax that is owed, but not less than five dollars (\$5.00).

3.36.160 Additional Powers and Duties of the Tax Administrator.

(a) The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

(b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Chapter, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)*. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

(c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict

requirements of this Chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.36.140 of this Chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received.

(f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Chapter.

(g) Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users' tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator may take into consideration the

uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.36.170 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*. The Tax Administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, 2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this Chapter unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax

Administrator may impose a penalty of Five Hundred Dollars (\$500.00) on such person for each day following: 1) the initial date that the person refuses to provide such access; or, 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.36.180 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, it may be refunded as provided in this Section as follows:

(a) **Written Claim for Refund:** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this Section.

(b) **Compliance with Claims Act:** The filing of a written claim pursuant to *Government Code Section 935* is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Chapter shall be subject to the provisions of *Government Code Sections 945.6 and 946*. The Tax Administrator, or the City Council where the claim is in excess of Five Thousand Dollars (\$5,000.00), shall act upon the refund claim within the time period set forth in *Government Code Section 912.4*. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax Administrator shall give notice of the action in a form, which substantially complies with that set forth in *Government Code Section 913*.

(c) **Refunds to Service Suppliers:** Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: 1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; 2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, 3) in the case of an

overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.36.190 Appeals.

(a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 3.36.180 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.36.180 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*]. To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.36.180 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager, or designee, by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, or designee, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

(e) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.36.200 No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

3.36.210 Notice of Changes to Chapter.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

3.36.220 Effect of State and Federal Reference/Authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereof by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (e.g., as a result of excluding all or a part of a utility service or charge therefore from taxation). To the extent voter approval would otherwise be required or a tax decrease would result from the new statute or interpretation, the prior version of the statute or interpretation shall remain applicable. For any new statute or interpretation that would not require voter approval or would not result in a decrease of a tax, provisions of the amended statute or interpretation shall be applicable and no amendment or modification of this Chapter shall be required to conform this Chapter to those changes.

3.36.230 No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

This Chapter 3.36 of the Norwalk Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by *Chapter XIII C of the California Constitution*, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance or extend the tax to a service that is not included in the ordinance. The People of the City of Norwalk affirm that the following actions shall not constitute an increase of the rate of a tax:

(1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;

(2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if

contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

(3) The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and

(4) The collection of the tax imposed by this ordinance, even if the City had, for some period of time, failed to collect the tax.

3.36.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.36.250 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter."

Section 5. In the event that a final court order should determine that the election held November 4, 2014, at which this ordinance was adopted is invalid for whatever reason, or that any tax imposed under the amendments to Chapter 3.36 of Title 3 contained in this ordinance is invalid in whole or in part, then the tax imposed under Chapter 3.36 of Title 3 as it existed prior to its amendment by this ordinance shall automatically continue to apply in lieu of the tax that has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by the amendments to Chapter 36 of Title 3 enacted by this ordinance is determined to be invalid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to Chapter 3.36 of Title 3 as amended by this ordinance shall be deemed to satisfy the tax imposed on that service under Chapter 36 of Title 3, as it existed prior to its amendment by this ordinance, so long as the tax is paid with respect

to a service provided no later than six months subsequent to the date on which the final court order is published.

Section 6. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

ADOPTED AT A SPECIAL ELECTION OF THE CITY OF NORWALK held on the 4th day of November 2014.

**MARCEL RODARTE
MAYOR**

ATTEST:

**THERESA DEVOY, CMC
CITY CLERK**

RESOLUTION NO. 14-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORWALK CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, FOR SUBMISSION TO THE QUALIFIED VOTERS OF THE CITY A PROPOSED ORDINANCE AMENDING CHAPTER 3.36 OF THE NORWALK MUNICIPAL CODE TO MODERNIZE THE LANGUAGE FOR THE UTILITY USERS TAX (UUT) WITH NO INCREASE TO THE CURRENT TAX RATE

WHEREAS, for more than two decades, similar to numerous cities throughout California the City of Norwalk has collected a utility users tax; and

WHEREAS, technology and communications services have changed dramatically over the past 22 years and continues to evolve at a rapid pace, rendering the City's existing UUT ordinance outdated; and

WHEREAS, due to the passage of time since the establishment of the current UUT, clarifications and updates to an outdated ordinance are needed at this time; and

WHEREAS, among other policy objectives, the City seeks to ensure that all residents are treated equally regardless of what types of telecommunications services they use; and

WHEREAS, modernization and clarification of the UUT to include current technologies and reflect the realities of the current communications industry, require voter approval under the California Constitution; and

WHEREAS, this proposed measure will NOT increase tax rates, but simply maintains funding for services the community already relies on, while ensuring all Norwalk taxpayers are treated equally and fairly, providing for everyone to pay their fair share, regardless of the technology they use; and

WHEREAS, this measure contains safeguards such as mandatory, independent financial audits and posting these audits for public review; and

WHEREAS, strict financial accountability ensures that funds are spent efficiently, effectively and as promised and cannot be taken by Sacramento; and

WHEREAS, this measure will maintain City-funded after-school and recreational programs and youth job training programs, as well as gang prevention programs for at-risk youth. These programs provide over 5,000 per month children and youth in our community with safe, supervised activities that keep them off the streets and out of trouble; and

WHEREAS, this local funding will continue to provide revenue for programs for seniors including meals-on-wheels and senior supportive services, services for residents with physical and developmental disabilities, school safety programs and gang prevention programs; and

WHEREAS, revenue from this measure will help maintain quality parks, roads and graffiti-free neighborhoods which means less crime and gang activity and improves local property values; and

WHEREAS, this measure allows the City to continue making Norwalk a safe and attractive place to live; and

WHEREAS, the measure contains exemptions for low-income disabled and blind customers and the City desires to continue those exemptions; and

WHEREAS, this measure prohibits any increase in the UUT tax rate without voter approval; and

WHEREAS, the slowdown in the local economy has resulted in a decline in other types of revenue for the City to devote to essential City services and updating this measure ensures a local source of revenue that by law must be used to fund local services and cannot be taken by Sacramento politicians; and

WHEREAS, the City Council has unanimously declared a fiscal emergency in the City as a result of numerous economic factors;

WHEREAS, due to the existence of the fiscal emergency the City Council desires to submit to the voters at a Special Municipal Election a proposed ordinance to modernize the City's utility user tax; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed ordinance to the voters for ratification and approval

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORWALK DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That there is called and ordered to be held in the City of Norwalk, California on Tuesday, November 4, 2014, a Special Municipal Election for the purpose of submitting a measure to the voters.

Section 2. The City Council has declared by unanimous vote that a fiscal emergency now exists in the City. Given the State's cuts in funding for local services, a continuing level of local revenue is immediately needed to fund a level of municipal services required to properly protect the public health, safety, and welfare. There is no scheduled regular municipal election prior to March of 2015. Given the existence of such a fiscal emergency and the requirements of the California Constitution, the City Council hereby orders that the following measure be submitted to the voters at the special election called herein, rather than the next regular municipal election:

Without raising current tax rates, shall an ordinance be adopted modernizing the City's utility users tax ordinance to require equal treatment of taxpayers by ensuring the tax applies regardless of technology used; exempting seniors, low-income disabled/blind residents; funding current gang prevention, youth, after-school, senior and disabled programs; neighborhood patrols/school crossing guards, pothole repairs, and other general services; subject to financial audits, local control of funds/no rate increase without voter approval?	YES
	NO

Section 3. The type of tax is a utility users tax imposed on users of telephone, electric, and gas utility services in the City, as defined in Exhibit A, to the extent permitted by state and federal law. The rate of the tax shall not exceed 5.5% and utility service providers shall collect the tax from utility service users on the utility service bills, to be remitted to the City thereafter. The full text of the ordinance to be submitted to the voters is attached as Exhibit A, which is incorporated herein by this reference.

Section 4. That the ballots to be used at the election shall be in form and content as required by law.

Section 5. That the City Clerk is authorized, instructed and directed to coordinate with the County of Los Angeles Registrar-Recorder/County Clerk to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 6. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in §14401 of the Elections Code of the State of California.

Section 7. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 8. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 9. That the City Clerk shall certify to the passage and adoption of this resolution.

Section 10. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

APPROVED AND ADOPTED this 15th day of July 2014.



**MARCEL RODARTE
MAYOR**

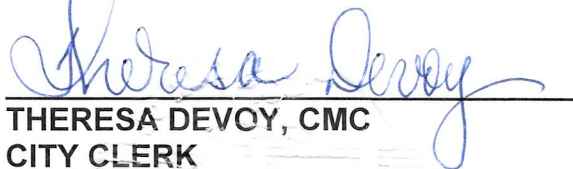
ATTEST:

I, **Theresa Devoy**, City Clerk of the City of Norwalk, California **DO HEREBY CERTIFY** that the foregoing Resolution, being **Resolution No. 14-40** has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Norwalk City Council, held July 15, 2014, and that the same was approved and adopted by the following vote to wit:

AYES: Councilmembers Kelley, Mendez, and Vernola; Vice Mayor Shryock and Mayor Rodarte

NOES: None

ABSENT: None



**THERESA DEVOY, CMC
CITY CLERK**

ORDINANCE NO. 14-1658

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF NORWALK
AMENDING THE CITY'S UTILITY USERS TAX**

WHEREAS, the Norwalk City Council unanimously declared on June 17, 2014, that a fiscal emergency exists in the City; and

WHEREAS, the City Council submitted this ordinance to the voters at the November 4, 2014 election.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF NORWALK DO ORDAIN
AS FOLLOWS:**

Section 1. Chapter 3.36 of Title 3 the Norwalk Municipal Code ("NMC") entitled "Utility User Tax" which applies a five and one-half percent (5.5%) tax rate on all telephone, electric and gas charges in the City of Norwalk is amended as set forth in this ordinance.

Section 2. In no event may the City Council alter the provisions of sections 3.36.050, 3.36.060, and 3.36.070 to increase the five and one-half percent (5.5%) rate on telecommunication, electric and gas use without the approval of a majority of voters of the City, voting on the question of the tax rate; provided, however, the City Council is hereby authorized to amend any other provisions of Chapter 3.36 of the NMC by three (3) affirmative votes of its members to, without limitation, carry out the general administrative purposes of Chapter 3.36 of the NMC to reasonably implement the collection of the utility user tax through public utilities and other service suppliers as authorized in Chapter 3.36 of Title 3 of the NMC.

Section 3. This Ordinance shall be effective only if approved by a majority of voters voting thereon and shall go into effect ten (10) days after the vote is certified by the City Council.

Section 4. Chapter 3.36 of Title 3 of the NMC is amended to read:

"Chapter 3.36

Utility Users Tax

Sections:

3.36.010	Short Title
3.36.020	Purpose
3.36.030	Definitions
3.36.040	Constitutional, Statutory, and Other Exemptions
3.36.050	Telecommunication Users Tax
3.36.060	Electricity Users Tax

- 3.36.070 Gas Users Tax
- 3.36.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity
- 3.36.090 Bundling Taxable Items with Nontaxable Items
- 3.36.100 Substantial Nexus/Minimum Contacts
- 3.36.110 Duty to Collect – Procedures
- 3.36.120 Collection Penalties – Service Suppliers
- 3.36.130 Actions to Collect
- 3.36.140 Deficiency Determination and Assessment – Tax Application Errors
- 3.36.150 Administrative Remedy – Nonpaying Service Users
- 3.36.160 Additional Powers and Duties of the Tax Administrator
- 3.36.170 Records
- 3.36.180 Refunds
- 3.36.190 Appeals
- 3.36.200 No Injunction/Writ of Mandate
- 3.36.210 Notice of Changes to Chapter
- 3.36.220 Effect of State and Federal Reference/Authorization
- 3.36.230 No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal
- 3.36.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure
- 3.36.250 Remedies Cumulative

3.36.010 Short title. This Chapter 3.36 shall be known as the Utility Users Tax Ordinance of the City of Norwalk.

3.36.020 Purpose. This Chapter 3.36 is enacted solely to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City's General Fund and used for the usual and current expenses of the City.

3.36.030 Definitions. The following words and phrases whenever used in this Chapter 3.36 shall be construed as defined in this Section:

(a) **“Ancillary telecommunication services”** means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:

(1) **“Conference bridging service”** means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(2) **“Detailed telecommunications billing service”** means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(3) **“Directory assistance”** means an ancillary service of providing telephone number information, and/or address information.

(4) **“Vertical service”** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(5) **“Voice mail service”** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service

(b) **“Billing address”** shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

(c) **“City”** shall mean the City of Norwalk.

(d) **“Gas”** shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

(e) **“Mobile telecommunications service”** shall mean commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations there under.

(f) **“Month”** shall mean a calendar month.

(g) **“Non-Utility Service Supplier”** means:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. Section 79z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator (including a community choice aggregator), pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

(3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

(h) **“Paging service”** means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(i) **“Person”** shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(j) **“Place of primary use”** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(k) **“Post-paid telecommunication service”** means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(l) **“Prepaid telecommunication service”** means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.

(m) **“Private telecommunication service”** means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i. e., the location where the customer either inputs or receives the communications).

(n) **“Service address”** means the residential street address or the business street address of the service user. For a telecommunication or video service user, “service address” means either:

(1) The location of the service user's telecommunication equipment from which the telecommunication originates or terminates, regardless of where the telecommunication is billed or paid; or,

(2) If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.

(3) For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

(o) **"Service supplier"** shall mean any entity or person, including the City, which provides or sells utility service to a user of such service within the City. The term shall include any person required to collect, or self-collect under Section 3.36.080 hereof, and remit a tax as imposed by this Title 3, including its billing agent in the case of electric or gas suppliers.

(p) **"Service user"** shall mean a person required to pay a tax imposed under the provisions of this Chapter 3.36.

(q) **"State"** shall mean the State of California.

(r) **"Tax Administrator"** shall mean the Finance Director, or his or her designee.

(s) **"Telecommunications service"** means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with "telecommunication services." "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).

(t) **"VoIP (Voice Over Internet Protocol)"** means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(u) **"800 Service"** means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically

marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

(v) **"900 Service"** means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

3.36.040 Constitutional, Statutory, and Other Exemptions.

(a) Nothing in this Chapter 3.36 shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a Federal or State statute, the Constitution of the United States or the Constitution of the State.

(b) Any service user that is exempt from the tax imposed by this Chapter 3.36 pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user's tax exempt status. A service user that fails to comply with this Chapter 3.36 shall not be entitled to a refund of a users' tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 3.36.190 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.36.190 of this Chapter is a prerequisite to a suit thereon.

(c) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

(d) The utility users tax imposed by this Chapter 3.36 shall not apply to any person who is sixty-five (65) years of age or older, who is a Service User of telephone, electric, or gas services, in or upon any residential premises occupied by such person. The utility users tax imposed by this Chapter 3 shall also not apply to any person who is a Service User of telephone, electric, or gas services, in or upon any residential

premises occupied by such person, and who meets the criterion of eligibility as established by the Social Security Administration's Supplemental Security Income Program for the Blind and Disabled (Title XVI of the Social Security Act as amended), without regard to the age of such disabled person.

(e) The exemption granted by this section shall not eliminate the duty of the Service Supplier from collecting taxes from such exempt persons, or the duty of such exempt persons from paying such taxes to the Service Supplier; unless an exemption is applied for by the Service User and granted in accordance with the provisions of this section.

(f) Any Service User exempt from the taxes imposed by this Chapter because of the provisions of subsection (d) above, may file an application with the Tax Administrator for an exemption. Such application shall be made upon a form supplied by the Tax Administrator; and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption.

(g) The Tax Administrator shall review all such applications, and shall certify as exempt those applicants determined to qualify therefor; and shall notify all Service Suppliers affected that such exemptions have been approved. For each exemption, the following information shall be transmitted to the Service Supplier:

- (1) Name of exempt applicant;
- (2) Account number shown on utility bill;
- (3) Address to which exempt service is being supplied; and

(4) Any other information as may be necessary for the Service Supplier to remove the exempt Service User from its tax billing procedure.

(h) Upon receipt of such notice, the Service Supplier shall not be required to continue to bill any further tax imposed by this Chapter from such exempt Service User, until further notice by the Tax Administrator is given. The Service Supplier shall eliminate such exempt Service User from its tax billing procedure no later than sixty (60) days after receipt of such notice from the Tax Administrator.

(i) All exemptions shall continue and be renewed automatically by the Tax Administrator, so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the Service Address or residence of the exempt individual; further provided such individual may nevertheless apply for a new exemption with each change of address or residence.

(j) The Tax Administrator shall have the power and right to demand evidence of continued eligibility of a Service User for exemption under the provisions of this Section. Such evidence may include, but need not be limited to, copies of business

records, letters or statements from the Social Security Administration, copies of income tax returns, and such other evidence concerning the Service User or other members of his household as may tend to prove or disprove such eligibility. Failure to provide such evidence as is within the control of a Service User to so provide, either directly by him or by his consent or the consent of a member of his household when such evidence is requested of the Service User in writing by the Tax Administrator, shall be grounds for the immediate discontinuance of the Service User's eligibility for exemption under the provisions of this Section. Evidence provided to the Tax Administrator upon request, or voluntarily provided by the Service User without request, may not be used against such Service User as evidence of violation of the provisions of this Section; such evidence may only be used as grounds for termination of the exemption herein provided.

(k) Any person exempt from the tax shall notify the Tax Administrator within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemptions provided by this Section, when the basis for such exemption either does not exist or ceases to exist.

3.36.050 Telecommunication Users Tax.

(a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent, or as otherwise provided by law. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section 124*). The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, sourcing rules for the taxation of other telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi jurisdictional taxation .

(c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter 3.36, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to or not subject to the tax of subsection (a) above.

(d) As used in this Section, the term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

(e) To prevent actual multi jurisdictional taxation of telecommunication services subject to tax under this Section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section.

(f) The tax on telecommunication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

3.36.060 Electricity Users Tax.

(a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

(b) As used in this Section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) energy charges;
 - (2) distribution or transmission charges;
 - (3) metering charges;
 - (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
 - (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service; and,
 - (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.
- (c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.
- (d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the of the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) As used in this Section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

(f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Title 3 shall be collected and remitted in the manner set forth in Section 3.36.080 of this Chapter. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.36.070 Gas Users Tax.

(a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this Section shall be at the rate of five and one-half percent (5.5%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product.

(b) As used in this Section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-

collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,

(5) Charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

(c) As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

(d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

(e) There shall be excluded from the calculation of the tax imposed in this Section, charges made for gas that is to be resold and delivered through a pipeline distribution system.

(f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Title 3 shall be collected and remitted in the manner set forth in Section 3.36.080. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following

each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

3.36.080 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

(a) Any service user subject to the tax imposed by Section 3.36.060 or by Section 3.36.070 of this Chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing, may be applied against any subsequent tax bill that becomes due.

(b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

3.36.090 Bundling Taxable Items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be

based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges.

3.36.100 Substantial Nexus/Minimum Contact.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus", "substantial economic presence", and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users' tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents, affiliates or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Chapter (*e.g.*, an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City).

3.36.110 Duty to Collect-Procedures.

(a) **Collection by Service Suppliers:** The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service

user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.36.60 shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Chapter. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(b) **Filing Return and Payment:** Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to *Revenue and Tax Code Section 7284.6*, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

3.36.120 Collection Penalties-Service Suppliers.

(a) Taxes collected from a service user, or owed by a service user subject to Section 3.36.080 hereof, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Chapter shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

(b) If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 3.36.52 hereof on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen

percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this Chapter shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users' tax, or otherwise legally established, to create a central payment location or mechanism.

3.36.130 Actions to Collect.

(a) Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under *11 U. S. CA. Section 507(a)(8)(C)*. Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.36.140 Deficiency Determination and Assessment-Tax Application Errors.

(a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this Chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.36.140 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14)

calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter.

(c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.36.190 of this Chapter. Filing an application with the Tax Administrator and appeal to the City Manager, or designee, pursuant to Section 3.36.190 of this Chapter is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Chapter shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this Chapter may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.36.150 Administrative Remedy-Non-Paying Service Users.

(a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users

for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 3.36.150 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(c) If the service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of receive of notice from the Tax Administrator, the service user shall pay in addition to the tax owed, a delinquency penalty in the sum of twenty-five percent (25%) of the total tax that is owed, but not less than five dollars (\$5.00).

3.36.160 Additional Powers and Duties of the Tax Administrator.

(a) The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

(b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Chapter, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)*. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

(c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict

requirements of this Chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.

(d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 3.36.140 of this Chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received.

(f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Chapter.

(g) Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The Tax Administrator may also participate with other utility users' tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator may take into consideration the

uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.36.170 Records.

(a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.

(b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

(c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*. The Tax Administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the City, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, 2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

(e) If any person subject to record-keeping under this Chapter unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax

Administrator may impose a penalty of Five Hundred Dollars (\$500.00) on such person for each day following: 1) the initial date that the person refuses to provide such access; or, 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

3.36.180 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, it may be refunded as provided in this Section as follows:

(a) **Written Claim for Refund:** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter from a person or service supplier, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this Section.

(b) **Compliance with Claims Act:** The filing of a written claim pursuant to *Government Code Section 935* is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Chapter shall be subject to the provisions of *Government Code Sections 945.6 and 946*. The Tax Administrator, or the City Council where the claim is in excess of Five Thousand Dollars (\$5,000.00), shall act upon the refund claim within the time period set forth in *Government Code Section 912.4*. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax Administrator shall give notice of the action in a form, which substantially complies with that set forth in *Government Code Section 913*.

(c) **Refunds to Service Suppliers:** Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Chapter, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: 1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; 2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, 3) in the case of an

overpayment by a service user to the service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.36.190 Appeals.

(a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 3.36.180 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.36.180 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*]. To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.36.180 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager, or designee, by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, or designee, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

(e) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.36.200 No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

3.36.210 Notice of Changes to Chapter.

If a tax under this Chapter is added repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

3.36.220 Effect of State and Federal Reference/Authorization.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereof by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (e.g., as a result of excluding all or a part of a utility service or charge therefore from taxation). To the extent voter approval would otherwise be required or a tax decrease would result from the new statute or interpretation, the prior version of the statute or interpretation shall remain applicable. For any new statute or interpretation that would not require voter approval or would not result in a decrease of a tax, provisions of the amended statute or interpretation shall be applicable and no amendment or modification of this Chapter shall be required to conform this Chapter to those changes.

3.36.230 No Increase in Tax Percentage or Change in Methodology Without Voter Approval; Amendment or Repeal.

This Chapter 3.36 of the Norwalk Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by *Chapter XIII C of the California Constitution*, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance or extend the tax to a service that is not included in the ordinance. The People of the City of Norwalk affirm that the following actions shall not constitute an increase of the rate of a tax:

(1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;

(2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if

contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;

(3) The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and

(4) The collection of the tax imposed by this ordinance, even if the City had, for some period of time, failed to collect the tax.

3.36.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure.

The City shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.36.250 Remedies Cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter."

Section 5. In the event that a final court order should determine that the election held November 4, 2014, at which this ordinance was adopted is invalid for whatever reason, or that any tax imposed under the amendments to Chapter 3.36 of Title 3 contained in this ordinance is invalid in whole or in part, then the tax imposed under Chapter 3.36 of Title 3 as it existed prior to its amendment by this ordinance shall automatically continue to apply in lieu of the tax that has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by the amendments to Chapter 36 of Title 3 enacted by this ordinance is determined to be invalid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to Chapter 3.36 of Title 3 as amended by this ordinance shall be deemed to satisfy the tax imposed on that service under Chapter 36 of Title 3, as it existed prior to its amendment by this ordinance, so long as the tax is paid with respect

to a service provided no later than six months subsequent to the date on which the final court order is published.

Section 6. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

ADOPTED AT A SPECIAL ELECTION OF THE CITY OF NORWALK held on the 4th day of November 2014.

**MARCEL RODARTE
MAYOR**

ATTEST:

**THERESA DEVOY, CMC
CITY CLERK**